

Message Text

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ACTION L-03

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SUBJ: ASSISTANCE TO AMERICAN WOMAN IN KENYA

REF: STATE 190207

1. BACKGROUND, CASE DESCRIBED IN REFTEL IS PROBABLY THAT OF KATHLEEN STUEVER HURD, OF MALINDI, KENYA. SHE HAS CALLED THE EMBASSY SEVERAL TIMES THIS YEAR, ASKING DETAILED QUESTIONS WHICH WE HAVE TRIED TO ANSWER IN GENERAL FROM OUR EXPERIENCE. OUR REPLIES, HOWEVER, HAVE BEEN MADE WITH DISCLAIMERS OF THE EMBASSY'S EXPERTISE OR AUTHORITY IN LEGAL MATTERS, AND THIS HAS NOT BEEN MUCH COMFORT TO MRS. HURD, WHOSE OWN LAWYER HAD HAD HER CASE, WE BELIEVE, FOR THREE YEARS NOW. SHE RECEIVED THE EMBASSY'S LIST OF LAWYERS WITH THE SUGGESTION THAT SHE CONSULT A FEMALE ATTORNEY, WHO MIGHT BE MORE SYMPATHETIC TO HER CASE. THIS HAS EVIDENTLY NOT WORKED OUT. THE EMBASSY HAS RECENTLY LEARNED OF A NAIROBI CONSULTING LAW FIRM STAFFED BY AMERICAN ATTORNEYS. WHILE NOT ALLOWED TO PRACTICE BEFORE A KENYAN COURT, THEY CAN PROVIDE LEGAL ADVICE AND CONTACTS WITH KENYAN FIRMS WHICH CAN GO TO COURT. THIS FIRM DEALS MAINLY IN CORPORATE LAW BUT MIGHT BE INTERESTED IN ANOTHER TYPE OF CIVIL CASE. CERTAINLY THERE WOULD BE THE OPPORTUNITY TO PROFIT FROM THE COUNSEL OF ATTORNEYS SKILLED IN BOTH AMERICAN AND KENYAN LAW, AS APPEARS TO BE NECESSARY HERE. THE FIRM: DUNCAN, ALLEN, AND MITCHELL, P.O. BOX 56470, NAIROBI; TELEPHONE: NAIROBI 26267.

2. RESTRICTIONS ON DEPARTURE. A REENTRY PERMIT IS GENERALLY
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REQUIRED FOR A RESIDENT OF KENYA TO LEAVE THE COUNTRY. IN GENERAL, SUCH PERMITS ARE NOT ISSUED WITHOUT THE HUSBAND'S PERMISSION, EVEN IF THE COUPLE IS SEPARATED. IF THE CASE IN QUESTION IS INDEED THAT OF MRS. HURD, SHE HAS A REENTRY PERMIT IN HER PASSPORT VALID UNTIL THE END OF AUGUST OR SEPTEMBER, 1978. MRS. HURD OBTAINED HERS WITHOUT HER HUSBAND'S APPROVAL THROUGH THE INTERVENTION OF A CONSULAR OFFICER SEVERAL MONTHS AGO BUT SHOULD NOT HOPE TO HAVE

THIS EXTRAORDINARY EXCEPTION REPEATED. B) IF A RESIDENT OF KENYA DOES NOT HAVE A REENTRY PERMIT, THE ASSUMPTION IS THAT THE DEPARTURE IS BEING MADE WITHOUT THE INTENT TO RETURN, AND A TAX CLEARANCE CERTIFICATE IS NEEDED. SUCH A CERTIFICATE WOULD BE VERY DIFFICULT TO OBTAIN IF THE PERSON LEAVING WAS A PARTY IN A DISAGREEMENT OVER OWNERSHIP AND ASSETS OF A KENYAN FIRM. C) IT IS POSSIBLE FOR A HUSBAND WHO KNOWS HIS WIFE WISHES TO LEAVE THE COUNTRY TO HAVE A STOP ORDER PLACED AGAINST HER WITH KENYAN IMMIGRATION. D) IT IS ALSO POSSIBLE FOR SOMEONE TO WALK EASILY THROUGH ALL AIRPORT DEPARTURE PROCEDURES IN SPITE OF THE IMPEDIMENTS LISTED ABOVE, SINCE CONTROLS ARE NOT UNIFORMLY ENFORCED.

3. VALIDITY OF DOCUMENTS. KENYA WOULD PROBABLY RECOGNIZE AS VALID A NEW YORK DIVORCE CERTIFICATE, BUT ONLY IF BOTH PARTIES NAMED IN THE DIVORCE WERE PHYSICALLY PRESENT IN NEW YORK WHEN THE DIVORCE BECAME FINAL (PHYSICAL PRESENCE OF BOTH PARTIES IS ONE OF THE REQUIREMENTS OF A KENYAN DIVORCE). THIS WOULD APPLY EVEN IN AN UNCONTESTED DIVORCE.

4. BUSINESS INTERESTS. WE PRESUME THAT, IF SOMEONE LEAVES KENYA IN GOOD ORDER, HE (SHE) CAN REMAIN AN INVESTOR IN KENYA AND RECEIVE ABROAD ANY PROFITS DUE. HE WOULD NEED A CERTIFICATE OF APPROVED ENTERPRISE FROM THE MINISTRY OF FINANCE AND PLANNING. WITH THAT DOCUMENT, HE WOULD HAVE TO ASK FOR APPROVAL FROM THE CENTRAL BANK OF KENYA TO REMIT FOREIGN EXCHANGE. IF THIS IS THE CASE OF MRS. HURD, ONE OF HER BIGGEST PROBLEMS, AS WE UNDERSTAND UNCLASSIFIED

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IT, HAS BEEN THAT HER HUSBAND IS REQUIRING, AS A CONDITION OF AGREEING TO A DIVORCE, THAT SHE DIVEST HERSELF OF HER BUSINESS INTERESTS IN KENYA. IT IS ENTIRELY POSSIBLE THAT, IF THE DIVORCE CASE EVER COMES TO COURT, THE COURT WOULD RULE THAT HER SHARES IN THEIR BUSINESS INTERESTS ARE THE PROPERTY OF HER HUSBAND. THE MATTER OF WHETHER THE WOMAN IN QUESTION COULD RECOVER HER INVESTMENT WHILE IN THE U.S. IS BEYOND THE EMBASSY'S COMPETENCE BUT WOULD CERTAINLY DEPEND ON THE CONDITION OF THE INDIVIDUAL CASE. IN THEORY, IT IS POSSIBLE, BUT ONLY AN ATTORNEY THOROUGHLY FAMILIAR WITH KENYAN LAW AND THE WOMAN'S PARTICULAR SITUATION COULD COMPETENTLY ADVISE HER. WE NOTE ONLY THAT THE REGULATIONS AND RESTRICTIONS ON THE SALE OF PROPERTY (AND REMITTANCE OF PROCEEDS ABROAD) ARE DIFFERENT FROM THOSE AFFECTING THE REMITTANCE OF PROFITS.

5. RETURN TO KENYA. THERE BEING NO CONSULAR TREATY BETWEEN THE U.S. AND KENYA WHICH DEFINES JURISDICTION, IT IS POSSIBLE THAT THE AMERICAN CHILDREN WOULD BE CONSIDERED KENYAN IF THEY RETURNED TO KENYA, EVEN WITH AMERICAN PASSPORTS. IF THE MOTHER'S DIVORCE WERE NOT RECOGNIZED HERE, SHE COULD, PERHAPS FIND HERSELF IN THE SAME DIFFICULTIES SHE IS NOW SEEKING TO ESCAPE. THE PRACTICAL RISK OF LOSING CUSTODY OF THE CHILDREN APPEARS LOW TO US, BUT MUCH WOULD DEPEND ON THE PARENTS' RELATIONSHIP. WE FEEL AN ATTORNEY WOULD BE

BETTER ABLE TO ADVISE HER ON THIS POINT. WITH RESPECT TO THE
QUESTION OF HER RESPONSIBILITY FOR THE ACTS OF HER CO-INVESTORS,
WE KNOW OF NO REASON WHY SHE WOULD NOT BE HELD LIABLE WHEREVER
SHE IS.
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